

**Application by Highways England for M54 to M6 Link Road**  
**The Examining Authority's written questions and requests for information (ExQ1)**  
**Issued on 20 July 2020**  
**Responses From: Allow Ltd**

Questions to Interested Parties:

1.1 **1.1.4. – Woodland Planting**

*In paragraph 8.6.14 of the Case for the Scheme [APP-220] the Applicant indicates that it considers 'Where woodland planting is proposed, it is considered that the environmental benefits of the planting outweigh the impact to the openness of the Green Belt in that location.' Do other interested parties agree with this analysis and if not, could they explain why they take that view.*

1.2 We confirm that Allow Ltd do not agree with the analysis for the following reasons:

1.2.1 The Applicant is required to demonstrate the very special circumstances apply to the scheme which outweigh the loss of openness and therefore the significant harm to the Green Belt. It is our contention that the special circumstances which could apply to the new road do not also automatically apply to the environmental mitigation land, which should be provided outside the Green Belt if possible.

1.2.2 The Applicant does not demonstrate the case for 'Very Special Circumstances'. The fundamental aim of Green Belt policy is to keep the Green Belt permanently open given that the essential characteristics of Green Belts are their openness and their permanence. Instead of retaining a Green Belt that already provides beneficial uses for outdoor recreation (car boots and fishing) and does not need visual enhancement the Applicant seeks to decimate this existing Green Belt that is well managed and maintained by Allow and has been for over 65 years. The land is not damaged or derelict. Further the changes to the Green Belt are not required for the purposes of the Applicant's scheme they are required (by way of compulsory purchase) entirely in respect mitigation in circumstances where the Applicant's analysis of its proposed mitigation is entirely flawed resulting in the Applicant applying for compulsory purchase powers excessively.

1.2.3 There will be ecological benefits associated with new woodland planting. However, it is likely to be many years until these are realised. In addition, the benefits associated with new woodland planting need to be maximised by ensuring the most appropriate locations are identified for planting. Given that some of the woodland planting would appear to be isolated from other areas of retained woodland, this should be reviewed in order to optimise ecological benefits. The scheme is taking areas of long establish woodland with mixed habitats which, in parts, are situated alongside pools; these cannot be replaced by new planting in a location which is disjointed and divided from the remaining habitats by the road scheme.

1.2.4 A total of 3.26ha (as updated 21.08.20) of Allow Ltd.'s land is proposed to be taken by the scheme works and a further 8.24ha (as updated 21.08.20) of additional land for environmental mitigation, the majority of which is for new planting. It is considered that this is excessive in terms of replacing those trees lost in the locality, being several times the area taken.

1.2.5 A disproportionate area of the replacement planting is proposed to be on Allow's land compared to other parts of the scheme.

- 1.2.6 **It is our opinion that the assessment of woodland taken for works across the scheme has been incorrectly assessed and therefore the area required for mitigation is flawed and overstated. Plans provided by the Applicant to Allow Ltd, which informed the mitigation requirement calculations, illustrate excessive estimates which are clearly not currently woodland on the ground.** These include significant areas of mown grass verges, gorse scrub and brambles. Following our own mapping exercise, it is our assessment that a figure of approximately half the suggested area is a more accurate assessment of the woodland present on the ground. An example would be the central area of the current M54 road island which currently according to OS data and aerial photography have an area of 1.46 ha (3.60 acres) of woodland present, however the area assessed as woodland for the baseline data incorrectly assesses it as 2.391 Ha (5.908 Acres). This is a total of 2.31 acres, or 39%, of incorrectly designated woodland within the road island alone. Further information can be provided if required by the ExA. The extent of the proposed woodland planting will therefore significantly impact upon the openness of the green belt across the area of the scheme due to the area being significantly greater than that area actually taken by the scheme.
- 1.2.7 Widespread planting is not beneficial for the landscape and the proposals will significantly impact upon and change the character of the landscape. An open grassland field of 10.69 ha, (26.42 ac) surrounded by a tree belt which formed part of the original Hilton Park design is proposed to be taken for blanket tree planting. The area of mitigation planting has been reduced by approximately 3.87ha in the revision in August 2020, where the North West corner has been removed from the proposal. The amended proposal will still reduce the openness of the landscape around the Dark Lane, Hilton Lane and A460 junction. But more importantly the historical tree belt, which forms one of many of the original tree belts which were landscaped around the perimeter of the Hilton Park Estate will be lost forever as it becomes obscured in the proposed adjoining new planting – a significant detriment to the local landscape. The rectangle now removed from the proposal does little to reduce the impact upon the historic landscape.
- 1.2.8 We append herewith a report on this matter prepared by RPS Consulting Services Ltd, specialist Historic Landscape Consultants.
- 1.2.9 They conclude that the baseline description of the historic park presented in Appendix 6.5 of Chapter 6 of the ES is flawed. Also, the assessment fails to examine the impacts of the proposed environmental mitigation, which has an additional adverse impact on aspects of the historic landscape that has apparently not been considered during the design process. The identification of the land west of the new road in the vicinity of the Lower Pool as suitable for the proposed environmental mitigation does not appear to have taken any account of the potential impacts and effects on the historic landscape. As such this identification appears to have been driven solely by ecology issues rather than taking a more balanced approach.
- 1.2.10 There is no indication that adequate consideration has been given to provision of the required environmental mitigation on other land adjacent or close to the scheme. Some additional woodland could be established to the east of the new road in this area by thickening up the existing tree belts east of the Lower Pool, whilst still maintaining open parkland between the house and the woodland. There should also have been some consideration of keeping the proposed woodland planting within plot 5/4 in the eastern part of the plot (adjacent to the new road) therefore allowing the western perimeter tree belt to retain its separate identity.
- 1.2.11 The Applicant has not carried out any reasonable or robust analysis of alternatives despite applying for compulsory purchase powers and the statutory tests at section 122(2) and (3) of

the Planning Act 2008 and in particular that there is a compelling case in the public interest for the Applicant to acquire Allow's land compulsorily.

**2.1 1.3.17. - External Mitigation**

*Paragraph 8.8.10 of Chapter 8 the ES [APP-047] states 'However, the Scheme would achieve improvements to specific habitats as part of this overall objective and Highways England will seek to achieve further enhancements where possible outside the DCO process.' As this is outside the DCO process what weight do you consider should be afforded to these unsecured and undetailed enhancement measures?*

2.2.1 Although on paper it is a noble statement to make, using the correct metric will identify the proportionate/appropriate amount of habitat creation or improvement to offset impacts and result in a relevant biodiversity net gain. Given that no details are provided of these further enhancements (type, extent, management, funding), or how they will be secured and delivered, we would have thought that they should not be considered at this time.

2.2.2 It should not be an objective of the Applicant nor necessary to seek further enhancements. Allow have offered land which is situated outside the DCO boundary for potential mitigation as it is more appropriate for ecological habitat, landscape and noise attenuation than in the proposed location and we are open to looking at positive land management in the vicinity of the scheme instead of the proposed mitigation which we consider to not be appropriately located.

**3.1 1.6.8. - Geophysical Surveys**

*a) Paragraph 6.6.36 of Chapter 6 of the ES [APP-045] indicates that three areas originally identified for geophysical survey were not surveyed due to livestock being present. Is the Applicant seeking to undertake the surveys? b) Are the interested parties satisfied that sufficient information exists to allow a proper consideration of the matter without any further survey work?*

3.2 We are unable to establish whether sufficient information was gathered, however it is suggested that surveys could be rearranged or livestock could be moved if surveys are required. One of the areas where geophysical survey was planned but not undertaken was within Hilton Park. This was Area 4, to the south-east of Lower Pool, but almost all of this proposed area of geophysical survey is actually outside the land to be acquired for the scheme so should not pose an issue.

**4.1 1.7.6. - Landscape and Visual - General Approach:**

*Is the assessment undertaken against a baseline conclusion that the receiving landscape is of low landscape value – is this reasonable and agreed position by all parties?*

4.2.1 Allow Ltd would contest that the receiving landscape is not of low landscape value due to the quality and historical context of the landscape.

- 4.2.2 Table 7.7 of the ES identifies seven factors which are used to determine landscape value. Of these seven factors, four have been ascribed a 'low' value whilst three have been ascribed a 'medium' value, leading to an assessment that the study area is of low landscape value.
- 4.2.3 One of the factors to which a 'low' value has been ascribed is that of 'Conservation interests'. The description of this factor within Table 7.7 refers to Hilton Park (a locally-designated Historic Landscape Area and also to the presence of two Grade I listed buildings within the park.)
- 4.2.4 However, there are also several Grade II listed buildings within Hilton Park which are not referenced in the description within Table 7.7, including the Portobello Tower – a prominent commemorative tower of mid-18th century date which records the capture in 1739 of the Spanish town of Porto Bello in the West Indies by Admiral Vernon, a distant cousin of the owners of Hilton Hall.
- 4.2.5 We append herewith a report prepared by RPS Consulting Services Ltd, specialist Historic Landscape Consultants which provides additional information regarding the history and development of Hilton Park.
- 4.2.6 Specifically, the report finds that surviving elements of the post-medieval park may have been associated with Humphrey Repton, the renowned landscape designer who worked mostly in the latter part of the 18th century. This is not adequately acknowledged within the documents submitted by the Applicant, largely due to a flawed appraisal of historic maps. The current state of preservation of the historic park, along with the association with Repton and the presence of a number of significant historic buildings within the park, means that it has an enhanced level of importance.
- 4.2.7 We consider that the level of importance of Hilton Park has been underplayed by the Applicant and that the correct value of the 'Conservation interests' factor in Table 7.7 of the ES should be 'Medium'. This would therefore mean that four of the seven assessed factors would be of 'Medium value' with the remaining three factors being of 'Low' value. The overall landscape value of the study area should therefore be considered to be 'Medium' rather than 'Low'.
- 4.2.8 Similar comments can apply to Question 1.7.16 directed to the Applicant.

Question directly to Allow Limited

5.1 **1.12.11. - Employment**

*a) In paragraphs 12.9.14, 2.9.18 and 12.9.19 of Chapter 12 of the ES [APP-051] the Applicant has assumed that the none of the various fishing lakes or the car boot sales facilities provide permanent employment. By “permanent employment” the ExA assumes that the Applicant means full-time employment.*

*Could the Applicant please confirm whether the ExA’s assumption of terminology is correct?*

*b) Could the parties affected confirm whether the Applicant’s assumption is correct?*

*c) If not, could the parties affected provide evidence to support the contention along with information as to the employment levels.*

5.2 Response from Allow Limited to 1.12.1

5.2.1 b) We can confirm that the Applicant’s assumption is not correct.

c)

Top Fishing Pool

5.2.2 Dan’s Pool is maintained for a fishing syndicate which has a membership of 110 local members, maintained by retired members.

Middle fishing Pool

5.2.3 Chubb Pool is maintained for a different local fishing syndicate of more than 150 members, with one groundsman.

Lower Fishing Pool

5.2.4 This pool was constructed in the 19<sup>th</sup> century and is maintained for the Fox Carp Syndicate, with a membership of nearly 30 members.

5.2.5 Top and Middle pools have been operating as fishing pools for almost 50 years. The Lower Pool has been operating as a fishing pool since it was built, originally as a pike pool supplying food to Hilton Hall. Competitions are held practically all year round at Middle Pool and seasonally in the other two.

The Car Boot Field

5.2.6 Dark Lane Car Boot is operated under licence by a company called Market Promotions Limited. Each day of a car boot event, they would employ the services of at least 10 local people, with 6 permanent employees and more part time. Typically, the event has 300 – 400 sellers and trade stands such as mobile butchers, with 2500 to 4000 visiting cars through the gates. Each event also provides work for 10 catering vendors on site, such as burger vans and donut vans. This all provides a valuable income for the sellers as well as for the employees working on site.

5.2.7 The fishing pools and car boot facilities could not be run without oversight. These facilities form part of a larger business on Allow Limited’s land, run by Oatlands Estates Limited, which presently employs one member of staff with the potential to employ more, in addition to the company directors, to maintain and run all facilities including the fishing pools and car boot facilities.

- 5.2.8 Both the car boot and fishing pools are community activities and perform a vital function for the local area. The car boot has been operating for over 30 years and is very popular with the local community, being well known to the locals who use their sales proceeds to spend in local shops.
- 5.2.9 The fishing pools owned by Allow Limited are used by local syndicates on a social basis and have approximately 300 members whose lives would also be dramatically affected, both by loss of access and in case of Lower Pool loss of the facility.
- 5.2.10 This would also have a knock on effect on local businesses, for example retailers selling fishing tackle, such as Ashmoor Park bait and fishing tackle shop, which could lead to loss of employment. Other local business are likely to suffer from the reduction in passing trade if people aren't coming into the area to attend the car boot days and the fishing pools.
- 5.2.11 Allow Limited has plans to rebuild its original business of horse trials in the near future and to include farm rides along with horse trials, which would provide further employment opportunities as well as services that would benefit the local population. The land around the pools and forestry trails are where these activities used to take place and they are required to make the rebuilt business successful again.
- 5.2.12 The businesses on Allow Limited's land provide employment as well as facilities to the general public, both of which would be seriously diminished if the current size of land purchase is approved. The amount of land being acquired from Allow Limited is a high enough percentage of Allow Limited's total land to jeopardise the business as a whole, which means other local facilities could be forced to close.

Questions addressed to the Applicant and other parties upon which Allow Ltd wish to comment:

- 6.1 **1.3.7. - Biodiversity Net Gain**  
*Paragraph 8.13.50 of Chapter 8 of the ES [APP-047] states 'Therefore, whilst delivering net gains in biodiversity may be desirable, there is no requirement for NSIPs to deliver overall net gains in the NPSNN and no indication that it will be mandatory in the near future. This reduces the weight applied to policies in the NPPF on net gain as relevant and important matters in decision making on NSIPs' The NPPF does however refer and is a material and important matter. Should Biodiversity Net Gain be a project aim*
- 6.2 The NPSNN advocates enhancement of biodiversity features/value through NSIPs, but does not state that there should be a measurable net gain. In addition, as noted above, it is our understanding that NSIPs are currently outside the scope of the mandatory net gain requirements in the Environment Bill. However, as NSIPs should still employ the mitigation hierarchy throughout the design and assessment process, and government policy is clearly moving towards delivering a net gain (and this has been adopted by other large infrastructure projects) 'enhancement' should be an objective of NSIPs (and evidencing this desirable where possible).

7.1 **1.3.8. - Biodiversity matrix**

*Could the Applicant explain why it has not used the Biodiversity matrix 2.0 which updates and replaces the original Defra biodiversity matrix?*

7.2.1 There is currently no standard approach to biodiversity metrics across the UK, with only some local authorities requiring demonstrable net gain through the use of metrics, and a variety of different metric systems being used. However, it is widely considered that the most appropriate metric to currently use is the Defra Biodiversity Metric 2.0 Calculation Tool. The Defra 2.0 tool is referenced in the Environment Bill and sets the new standard for metrics, employing a more sophisticated approach than other local metrics to date (e.g. Warwickshire), with many more parameters included. Defra 2.0 includes a larger range of habitat types; more guidance on difficulty and time to target condition for each habitat type; is prepopulated with distinctiveness, time to target condition and difficulty scores; includes new distinctiveness scores (0-8) to include very high and very low; includes new condition scores; includes two new elements 'Connectivity' and 'Strategic Significance'; includes 'accelerated succession'; includes off-site habitat options and takes account of proximity to the impact site.

7.2.2 The beta version of the Defra Biodiversity Metric 2.0 was available for use from July 2019. Although the final metric is not expected until December 2020, many projects looking to calculate biodiversity units since July 2019 have used version 2.0 of the metric. Given that the Environmental Statement for this project was issued in January 2020, we would have expected it to have used version 2.0 of the metric.

8.1 **1.3.11. Biodiversity off-setting calculation**

*In looking at the Biodiversity off-setting matrix (Appendix 8.2 to Chapter 8 of the ES [APP-176]) there are a number of minor discrepancies between the figures set out in Tables 3.3, 3.4, 3.6 and 3.8 and those in the summaries, Tables 3.9 and 3.10 and thus the summaries in Tables 3.11 and 3.12. Could these be checked. The discrepancies appear to be in the following (although some others are clearly rounding issues):*

- *Standing water Good condition (extant)*
- *Broad-leaved Moderate condition plantation (created)*
- *Standing water Moderate condition (extant)*
- *Running Water Good condition*

*If the original figures are included, by the ExA's calculation, show that there would only be 94.93% of the value after the Proposed Development when compared with the before. This falls outside the +/-5% asserted to be of 'no significant effect'. This figure, obviously, also omits any consideration of ancient woodland. a) Could the Applicant please check the figures. b) Is the statement in paragraph 8.9.133 of Chapter 8 of the ES [APP-047] therefore justified?*

8.2 Until the figures are checked by the Applicant, it is difficult to provide any comment on this. However, linking back to point 1.1.4, the credibility of all the figures should be reviewed. Using woodland as an example, there is likely a large discrepancy between the actual amount of woodland present across the scheme (identified from aerial imagery) and that included in calculations (possibly based on mapping). As such, how all the figures for

'area' used in the biodiversity unit calculations were arrived at should be clearly demonstrated.

9.1 **1.6.5 - Assessment of Effects**

*The likely significance of effects on the cultural heritage receptors identified in Section 6.9 of ES Chapter 9 [APP-048] prior to the implementation of the proposed essential mitigation is not presented in the ES. Can the Applicant provide the assessment scores for such receptors so that the efficacy of the proposed mitigation can be understood?*

9.2 With specific regard to Hilton Park, the reality is that there is no difference between the predicted significance of effect before and after the implementation of the proposed essential mitigation. This is because no essential mitigation has been provided that would reduce the significance of effect on the historic park, and in fact the essential mitigation which is proposed in the western side of the park for 'Landscape Integration' and Nature Conservation' purposes actually increases the significance of effect on this historic park, although this is not acknowledged in the application documents.

10.1 **1.6.10c - Archaeology/Trial Trenching**

*a) Paragraph 6.2.23 of the ES [APP-045] indicates that trial trenching "should be undertaken after the submission of the DCO". It is not clear whether this has now happened, or it programmed for the future. If it has happened could the Applicant please provide the results? b) If it is for the future, could this precisely be identified when in the process this is to take place and how would it be secured? c) If it is for the future, how can the SoS assess the particular significance of any heritage asset that may be affected (NPSNN, paragraph 5.128) if there is no available evidence on this.*

10.2.1 This is an important issue. Chapter 6 of the ES states that evaluation trenching will be undertaken after submission of the DCO, but early in the programme – presumably meaning the detailed design programme as the results are supposed to feed into the detailed design of the scheme (6.3.23). The results will also enable the development and implementation of further mitigation measures (for archaeological sites and features), including, where possible, preservation in situ (6.8.4).

10.2.2 The geophysical survey of parcel 5/2 (Survey Area 6) was fairly unsuccessful due to the presence of a considerable amount of modern material (probably associated with car boot sales), and the eastern part of the field was not surveyed at all due to obstructions related to a car boot sale. The geophysical survey of parcel 4/20c (Survey Area 3) was more successful but also found modern material to be present. There were also some anomalies which may represent archaeological activity.

10.2.3 As no trial trenching has been undertaken within parcels 5/2 and 4/20c (or indeed anywhere at all within the Scheme boundary), the presence/absence of archaeological sites/features remains uncertain – this means that the SoS cannot assess the particular significance of any such sites/ features that may be affected.

10.2.4 Of equal importance on this point is what happens if significant archaeological remains are found to be present in parcels 5/2 and 4/20c once the trial trenching has been carried out? The further mitigation suggested in Chapter 6 of the ES includes preservation in situ of archaeological remains – but this would mean no woodland planting and no ecology ponds,



thus the proposed environmental mitigation would not be possible and would need to be reallocated to another location as part of the detailed design.

11.1 **1.7.6 - General Approach**

*Is the assessment undertaken against a baseline conclusion that the receiving landscape is of low landscape value – is this reasonable and agreed position by all parties?*

11.2 We reserve the right to respond further following advice from a Landscape Consultant.

12.1 **1.7.16 - Landscape value**

*a) Table 7.7 Factors in determining landscape value of Chapter 7 of the ES [APP-046]. Can you provide further justification and explanation as to why scenic quality is 'low' when there are significant areas of remnant parkland (an HLA) Woodland TPO and individual TPO's across the site albeit that there are also significant detractors? b) Why is this not medium?*

12.2 We reserve the right to respond further following advice from a Landscape Consultant.

13.1 **1.7.17. - Landscape value**

*In Table 7.7 Factors in determining landscape value of Chapter 7 of the ES [APP-046] 'Conservation Interests' again identified as 'low' however there are grade I listed buildings Grade II\* listed buildings and numerous Grade II listed buildings as well as a local designated HLA why does this not elevate the value above 'low'?*

13.2 We reserve the right to respond further following advice from a Landscape Consultant.